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HOME(1954 9) Department

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Ms SERIES

G.O. No. 3104

Dated 30. 7. 49

[Despatch Abstract.]

Code of Civil procedure – Execution of decrees. Reciprocal arrangements between India and colony of Fiji – Letter from the Government of India – communicated

GOVERNMENT OF MADRAS
Abstract.
**

CODE OF CIVIL PROCEDURE - Execution of decrees - Reciprocal arrangements between India and the Colony of Fiji - Letter from the Government of India - Communicated.

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Home Department

G.O. (Ms) No. 3104. Dated, the 30th July 1949
READ the following:-

From the Government of India, Ministry of Law. No. F.37/49-L dated the 11th July 1949.

Sub: RECIPROCAL ARRANGEMENTS BETWEEN INDIA AND THE COLONY OF FIJI FOR THE EXECUTION OF DECREES

I am directed to forward for information, a copy of the following notifications on the above subject:-

1. Notification of the Government of India in the Ministry of Law No. F.37-I/49-L dated the 11th July 1949
2. Notification of the Government of India in the Ministry of Law No. F.37-II/49-L dated the 11th July 1949

The question, of suitably amending the Order-in-Council issued by the Government of the Colony of Fiji, by clearly specifying therein which of the Courts in India will be deemed to be "Superior Courts" for the purpose of the said order, is being taken up with the Government of Fiji and a further communication will follow on receipt of their reply.

Notification No.F.37-I/49-L dated the 11th July 1949 of the Government of India in the Ministry of Law.

The Order in Council issued by the Governor of the Colony of Fiji regarding reciprocity between India and the Colony of Fiji in the matter of execution of decrees and the Reciprocal Enforcement of Judgments Ordinace of that Colony are published below for general information:

I: ORDER IN COUNCIL.

L. Brian Freeston, Governor

WHEREAS by section 7 of the Reciprocal Enforcement of Judgments Ordinance it is provided that where the Governor is statisfied that reciprocal provisions have been made by the legislature of any other part of His Majesty's Dominions outside the United Kingdom for the enforcement within that part of His Majesty's Dominions of Judgmenets obtained in the Supreme Court of Fiji the Governor may by Order in Council declare that the said Ordinance shall extend to judgments obtained in a Superior Court in that part of His Majesty's Dominions in like manner as it extends to judgments obtained in a Superior Court in ~~that part of His Majesty's Dominions in like manner as it extends to ju~~ the United Kingdom and on any such order being made the said Ordinance shall extend accordingly:

AND WHEREAS the Governor is satisfied that such reciprocal provisions have been made by the legislature of the Dominion of India:

NOW, THEREFORE, I, by virtue of the powers in me vested as aforesaid, do, by and with the advice and consent of my Executive Council, hereby order that the said Ordinance shall be and hereby is extended to judgments obtained in any Superior Court within the Dominion of India and that the said Ordinance shall and does apply to such judgments in like manner as it extends to judgments obtained in a Superior Court in the United Kingdom.

Made by the Governor in Council this 5th day of May 1949.

L.A. SERCHI
Clerk, Executive Council

II. THE RECEIPROCAL ENFORCEMENT OF JUDGMENTS ORDINANCE. Ordinance No. 4 of 1922.

An Ordinance to facilitate the reciprocal enforcement of judgements and awards in the United Kingdom and Fiji.
/18th December 1922/

1. This Ordinance may be cited as the Reciprocal Enforcement of Judgements Ordinance. — Short Title

2. In this Ordinance, unless the context otherwise requires "judgment" means any judgment or order given or made after the passing of this Ordinance whereby any sum of money is made payable and includes an award in proceedings on an arbitration if the award has in pursuance of the law in force in the place where it was made become enforceable in the same manner as a judgment given by a court in that place; — Interpretation.

"original court" in relation to any judgment means the court by which the judgment was given;

"registering court" in relation to any judgment means the court by which the judgment was registered;

"judgment creditor" means the person by whom the judgment was obtained and includes the successors and assigns of of that person;

"judgment debtor" means the person against whom the judgement was given and includes any person against whom the judgment is enforceable in the place where it was given.

3. (1) Where a judgment has been obtained in the High Court in England or Ireland or in the Court of Session in Scotland the judgment creditor may apply to the Supereme Court of Fiji at any time within twelve months after the date of the judgment or such longer period as may be allowed by the said Supreme Court to have the judgment registered in the said Supreme Court and on any such application the said Supreme Court may, if in all the circumstances of the case it thinks it just and convenient that the judgment should be enforced in the Colony of Fiji, and subject to the provisions of this section, order the judgment to be registered accordingly. — Enforcement in the Colony of judgments obtained in High Court in England etc.

(2) No judgment shall be ordered to be registered under this section if

(a) the original court acted without jurisdiction; or
(b) the judgment debtor being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court did not voluntarily appear or otherwise submit or agree to submit to the jursidiction of that court; or
(c) the judgment debtor being the defendant in the proceedings was not duly served with the process of the original court and did not appear notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that Court or agreed to submit to the jurisdiction of that court; or
(d) the judgment was obtained by fraud; or
(e) the judgment debtor satisfies the registering Court either that an appeal is pending or that he is entitled and intends to appeal against the judgment; or
(f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

(3) Where a judgment is registered under thise section

(a) the judgment shall, as from the date of registration, be of the same force and effect and proceedings may be taken thereon as if it had been a judgment originally obtained or entered up on the date of registration in the registering court;

(b) the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself but in so far only as relates to executions under this section;

(c) the reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original court and the application for registration) shall be recoverable in like manner as if they were sums payable under the judgement.

No costs of actior in certai cases.

In any action brought in the Supreme Court on any judgment which might be ordered to be registered under the las preceding section the plaintiff shall not be entitled to recover any costs of the action unless an application to register the judgment under that section has previously been refused or unless the Court otherwise orders.

Issue of certificat of judgmer obtained in the colony.

5. Where a judgment has been obtained in the Supereme Court of Fiji against any person the Supereme Court shall, on an application made by the judgment credit and on proof that the judgment debtor is resident in the United Kingdom, issue to the judgment credit a certified copy of the judgment.

Power t make ru

6. (1) The Chief Justice may make rules of court for regulating the practice and procedure (including scales of fees and evidence) in respect of proceedings of any kind under this Ordinance and such rules of Court shall (inter alia) provide:-

(a) for service on the judgment debtor of notice of the registration of a judgment under this section; and

(b) for enabling the registering court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the Court thinks fit; and

(c) for suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside.

(2) ~~(3)~~ All such rules of Court shall be laid before the Legislative Council and shall come into operation on being approved by the Legislative Council and on publication in the Gazette.

Power to extend pro- visions of Ordinance

7. (1) Where the Governor is satisfied that reciprocal provisions have been made by the legislative of any other part of His Majestry's dominions outside the United Kingdom for the enforcement within that part of His Majesty's dominions of judgments obtained in the Supereme Court of Fiji the Governor may by Order in Council declare that this Ordinance shall extend to judgments obtained in a ~~superior~~ Court in that part of His Majesty's dominions in like manner as it extends to judgments obtained in a superior court in the United Kingdom and on any such order being made this Ordinance shall extend accordingly.

(2) For the purposes of this section the expression "that part of His Majesty's dominions outside the United Kingdom" shall be deemed to include any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's dominions.

(3) An order in Council under this section may be varied or revoked by a subsequent order.

(SHRI GOPAL SINGH)
Deputy Secretary to the Government of India.

Notification No. F.37-II/49-L dated the 11th July 1949 of the Government of India in the Ministry of Law.

In exercise of the power conferred by Explanation 2 to section 44A of the Code of Civil Procedure, 1908 (Act V of 1908) the Central Government is pleased to declare the Colony of Fiji to be a reciprocating territory, and the Supereme Court of the said Colony to be a Superiom Court of that territory for the purposes of the said section.

Shri Gopal Singh)
Deputy Secretary to the Government of India.

ORDER:

Communicated to the Honourable Judges of the High Court.

(By order of His Excellency the Governor)

Secretary to Government.

To the Honourable the Chief Justice, High Court, Madras

GOVERNMENT OF MADRAS
Home Department.

Memorandum No. 127568-Courts III/50-2 dated the 25th September 195

Sub: CODE OF CIVIL PROCEDURE - Execution of decrees - Reciprocal arrangements between India and the Colony of Fiji - Proclamation
Ref: G.O. (Ms) No. 3104 Home dated the 30th July 1949.

A copy of letter No. F.37/49-K dated the 7th September 1950 from the Government of India, Ministry of Law together with its enclosure is forwarded to the Registrar, High Court, Madras, in continuation of the G.O. cited.

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Secretary to Government.

To the Registrar, High Court, Madras.

Copy of Letter No. F.37/49-L dated the 7th September 1950 from the Government of India, Ministry of Law, New Delhi.

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Sub: RECIPROCAL ARRANGEMENTS BETWEEN INDIA AND THE COLONY OF FIJI FOR THE EXECUTION OF DECREES.

In continuation of this Ministry's letter No.F.37/49-L dated the 11th July 1949, on the above subject, I am directed to enclose herewith a copy of the Proclamation issued by the Governor of the Colony of Fiji on the 1st July 1950.

(Legal Notice No. 60).

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ORDINANCE.
(Chapter 23).
PROCLAMATION (No.9 of 1950)

(L.S.)
L. BRIAN FREESTON.

WHEREAS by Prolcmaation No. 8 of 1950, dated the 30th day of June 1950, Part II of the Foreign Judgments (Reciprocal Enforcement) Ordinance 1950, was applied to his Majesty's dominions outside the Colony and to judgments obtained in the courts of the said dominions as it applies to foreign countries and to judgments obtained in the courts of foreign countries:

AND WHEREAS at the date of aforesaid Proclamation No. 8 of 1950 the Reciprocal Enforcement of Judgments Ordinance was extended to India:

AND WHEREAS I am satisfied that in the event of the benefits conferred by Part II of theForeign Judgments (Reciprocal Enforcement) Ordinance being extended to judgments given in the superior courts of India, substantial reciprocity of treatment will be assured as respects the enforcement in India of judgments given in the Supreme Court of the Colony.

NOW therefore in exercise of the powers conferred upon me by section 3 of the Foreign Judgments (Reciprocal Enforcement) Ordinance I do by this Proclamation direct:

(a) that Part II of the Foreign Judgments (Reciprocal Enforcement) Ordinance shall extend to India;

(b) that the following courts in India shall be deemed to be superior courts for the purposes of the said Part II, that is to say,

(i) all High Courts and Judicial Commissioners' Courts

(ii) all District Courts

(iii) all other Courts whose civil jurisdiction is subject to no pecuniary limit provided that the judgment sought to be registered under the said Foreign Judgments (Reciprocal Enforcement) Ordinance is sealed with a seal showing that the jurisdiction of the Court is subject to no pecuniary limit.

GIVEN under my hand and the Public Seal of the Colony this 1st day of July 1950

GAD SAVE THE KING.

/True copy/

for Superintendent,
Madras Record Office, Egmore.